Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments

MB Docket No. 07-51

Reply to comments of Scott Musgrave of Digital Streets:

Mr. Musgrave is correct that the providers that he seeks to exclude from MDU properties already serve non-MDU properties, and thereby reduce their per-customer infrastructure cost. However, the providers seeking exclusive contracts are free, albeit unwilling, to offer their services to all properties, including MDU and non-MDU properties, and should do so. Ethical companies who try to give customers a free choice of provider should not be punished because companies such as Digital Streets are unable or unwilling to provide services in buildings where customers select providers, including non-MDU properties. If exclusive contracts are eliminated, all providers will be able to serve all customers that desire their services, and all systems will have the same number of potential customers. The only thing forcing companies such as Digital Streets to pay a higher infrastructure cost per potential customer is their decision to eliminate potential customers by refusing to serve persons who have a choice.

Mr. Musgrave incorrectly argues that local franchise cable television companies “have an unfair advantage” because they have already own infrastructure that smaller providers lack and will have to install. The existing providers that already own such infrastructure have installed it at similar or greater cost. Mr. Musgrave argues that it would cost new providers more to install new systems than it will cost existing providers to connect new subscribers to their existing systems. Even if this were true when only current costs are considered, it is clearly untrue when the amount that the original providers have already invested is also considered. Of course, contracts that exclude existing providers make that investment worthless.

Moreover, providers holding exclusive contracts do not need to “build an entire system” as Mr. Musgrave pretends. For example, in the case the Ponderosa apartments, Consolidated Smart Systems simply paid the landlord to exclude the existing provider and then connected the inside wiring (which had been installed years earlier, probably by the excluded provider, and had been providing satisfactory service to the customers of the excluded, previous provider) to one DIRECTV antenna, for a forty-unit building. These antennas are provided free by DIRECTV to each customer in buildings without exclusive contracts. In other words, the “system” that they “built” consisted solely of (1) 1/40th of what would have been provided free if their customers were not required to use them and (2) what they salvaged of the system previously used by the excluded provider. While they had promised to install a system that would have provided local channels on unlimited televisions at a fixed cost, they broke this contract, citing space constraints, and forced everyone desiring local channels to pay several times as much for DIRECTV on just one television as the amount that they had been promised for unlimited televisions.

Mr. Musgrave also discusses the interesting hypothetical question of what would happen if companies such as Digital Streets were to compete against larger companies. However, this will never occur as long as exclusive contracts are allowed. Companies such as Digital Streets and Consolidated Smart Systems will continue to offer services only to residents of those buildings where their competitors are excluded and the larger companies will continue to be able to offer service only in non-exclusive buildings, without competition from the companies that focus solely on the exclusive buildings. As long as there are exclusive contracts, there can be no competition for customers; instead, there will be competition only for exclusive contracts.